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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 MARK PICOZZI,

8 Plaintiff,

9 v.

10 CLARK COUNTY DETENTION CENTER,
11 et al.,

12 Defendants.

Case No. 2:15-cv-00816-JCM-PAL

ORDER
- AND -
REPORT OF FINDINGS AND
RECOMMENDATION

(Mot. for Order – ECF No. 89)

13 This matter is before the court on Plaintiff Mark Picozzi’s Motion for Court to Order CCDC
14 to Provide Officer Jolley’s Information (ECF No. 89), as well as his failure to serve defendant
15 Carr. This proceeding is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR
16 IB 1-3 of the Local Rules of Practice.

17 **BACKGROUND**

18 Mr. Picozzi is a *pro se* prisoner in the custody of the Nevada Department of Corrections.
19 He has received permission to proceed in this case *in forma pauperis* (“IFP”) pursuant to 28 U.S.C.
20 § 1915 and LSR 1-1 of the Local Rules of Practice. *See* IFP Application (ECF No. 3); Screening
21 Order (ECF No. 15). This case arises from Picozzi’s allegations, pursuant to 28 U.S.C. § 1983,
22 that his civil rights were violated while he was incarcerated at the Clark County Detention Center
23 (“CCDC”). Upon review of the Amended Complaint (ECF No. 14), the court found that Picozzi
24 stated plausible claims against 13 defendants: Sergeant Judd, Officers Hightower, Daos, Goins,
25 Hans, Brooks, Phillips, Carr, Razzo, Jolley, Coker, Garcia, and Nurse Amanda Vertner.¹ *See*
26 Screening Order (ECF No. 15).

27
28 ¹ On March 15, 2017, the court granted Mr. Picozzi’s request to substitute Nurse Amanda Vertner in place
of Jane Doe #1. *See* Order (ECF No. 66).

1 Mr. Picozzi has encountered multiple obstacles in effectuating service. The U.S. Marshals
2 Service (“USM”) served defendants Coker, Daos, Goins, Hightower, Judd, and Phillips on March
3 23, 2016. *See* Executed Summons (ECF No. 21). However, the USM was unable to locate
4 defendants Brooks, Carr, Garcia, Hans, Jolley, or Razzo. *See* Unexecuted Summons (ECF
5 No. 20). Picozzi filed multiple motions (ECF Nos. 32, 43, 44) seeking information to further his
6 efforts to accomplish service. The court granted his motions and directed counsel to submit the
7 unserved defendants’ personal information under seal and file a notice of compliance on the public
8 docket. *See* Nov. 2, 2016 Order (ECF No. 55). The court informed Picozzi that he would have 14
9 days from the notice of compliance to file a motion requesting service and, upon filing such
10 motion, the court will reset the service deadline and the USM would reattempt service. *Id.*

11 Counsel complied with the court’s order and indicated that service would be accepted by
12 the Las Vegas Metropolitan Police Department Risk Management Office for defendants Officer
13 Michael Brooks, Officer Joanne Hans, Officer Eduardo Garcia, Officer Gerald Razo, and retired
14 Officer Lynn Jolly. *See* Sealed Response (ECF No. 59); Notice (ECF No. 60). However, counsel
15 stated there is no record of a current or former corrections officer named Carr. *Id.* Picozzi timely
16 filed his Motion to Serve the Unserved Defendants (ECF No. 61).

17 Based on Picozzi’s substitution of Nurse Amanda Vertner in place of defendant Jane Doe
18 #1, the court ordered defense counsel to file under seal the last known address and telephone
19 number of Vertner and/or indicate whether counsel is authorized to accept service on her behalf;
20 and file a notice of compliance on the public docket. Order (ECF No. 66). Counsel complied with
21 the court’s Order regarding Vertner. *See* Sealed Response (ECF No. 70); Notice (ECF No. 71).
22 Picozzi filed a duplicative motion (ECF No. 67) regarding service of Vertner despite the court’s
23 explicit instruction that he need not do so.

24 The court granted Picozzi’s service requests in part as to defendants Brooks, Hans, Garcia,
25 Razo, Jolly, and Vertner, and denied in part without prejudice as to defendant Carr. *See* Apr. 6,
26 2017 Order (ECF No. 73). Because defendant Carr was not identified in the Sealed Response,
27 Picozzi was instructed to “file a timely motion specifying a different or more detailed name and/or
28 address for Carr, or whether some other manner of service should be attempted.” *Id.* at 3.

1 Additionally, he was

2 once again warned that he is ultimately responsible for providing the USM with
3 accurate and sufficient information to effectuate service. *See Walker v. Sumner*, 14
4 F.3d 1415, 1422 (9th Cir. 1994). Pursuant to Rule 4(m), Picozzi's failure to comply
with this Order by accomplishing service by **June 5, 2017**, will result in a
recommendation to the district judge that this case be dismissed without prejudice.

5 *Id.* at 3.

6 Summons were returned executed for defendants Brooks, Hans, Garcia, Razo, and Vertner,
7 *see* Executed Summons (ECF Nos. 77, 81),² but not for retired officer Jolley, *see* Unexecuted
8 Summons (ECF No. 78). The unexecuted summons for Jolley indicated that an additional address
9 was needed to complete service. *Id.* The Clerk of the Court issued a Notice of Intent to Dismiss
10 (ECF No. 87) for Jolley on June 8, 2017. Court records indicate that the notice was electronically
11 mailed to counsel for all defendants.

12 DISCUSSION

13 **I. PICOZZI'S MOTION (ECF No. 89)**

14 In the pending motion, Picozzi responds to the Notice of Intent to Dismiss (ECF No. 87)
15 entered after the USM unsuccessfully attempted to serve defendant Jolley. *See* Unexecuted
16 Summons (ECF No. 78). He asks the court yet again to order CCDC to provide the court correct
17 information to serve defendant Jolley since the information cannot be sent to Mr. Picozzi directly.

18 A considerable amount of time and effort has been expended to manage service in this case.
19 Counsel represented in the Sealed Response (ECF No. 59) that the Las Vegas Metropolitan Police
20 Department Risk Management Office would accept service for defendant Jolly. However, the
21 USM returned the summons unexecuted because an additional address was purportedly needed to
22 complete service. This may have been a clerical mistake or simple miscommunication but defense
23 counsel has not corrected the error or attempted to do so, despite receiving electronic notifications
24 of the notice of intent to dismiss and the motion. Nor did they respond to Picozzi's motion. The
25 failure to accept service caused additional motion practice and wasted judicial resources. The
26 motion is granted. Counsel for the CCDC defendants shall file a waiver of summons for defendant
27 Jolley pursuant to Rule 4(d) by **October 27, 2017**, and file an answer or responsive pleading by

28 ² Defendants Brooks, Hans, Garcia, Razo, and Vertner have also filed their Answers (ECF Nos. 82, 84).

1 **November 3, 2017.**

2 **IT IS ORDERED:**

- 3 1. Plaintiff Mark Picozzi's Motion for Court to Order CCDC to Provide Officer Jolley's
4 Information (ECF No. 89) is **GRANTED**.
5 2. Counsel for the CCDC defendants shall file a waiver of summons for defendant Officer
6 Lynn Jolley (retired, P#4152) pursuant to Rule 4(d) by **October 27, 2017**, and file an
7 answer or responsive pleading by **November 3, 2017**.


8 **II. PICOZZI'S FAILURE TO COMPLY WITH THE EXTENDED SERVICE DEADLINE**

9 On April 6, 2017, the court entered an Order (ECF No.73) denying without prejudice
10 Picozzi's request to have the USM serve defendant Carr because Carr was not identified in defense
11 counsel's sealed response. The court directed Picozzi to file a "timely motion specifying a
12 different or more detailed name and/or address for Carr, or whether some other manner of service
13 should be attempted." *Id.* He was warned that failure to file such motion or otherwise serve Carr
14 by June 5, 2017, would result in a recommendation to the district judge that Carr be dismissed
15 from this case. To date, Picozzi has not filed such motion, requested an extension of time, or taken
16 any other action to serve Carr.

17 Accordingly,

18 **IT IS RECOMMENDED:** Defendant officer Carr be DISMISSED without prejudice.

19 Dated this 16th day of October, 2017.

20
21 
22 PEGGY A. LEEN
23 UNITED STATES MAGISTRATE JUDGE

24 **NOTICE**

25 This Report of Findings and Recommendation is submitted to the assigned district judge
26 pursuant to 28 U.S.C. § 636(b)(1) and is not immediately appealable to the Court of Appeals for
27 the Ninth Circuit. Any notice of appeal to the Ninth Circuit should not be filed until entry of the
28 district court's judgment. *See* Fed. R. App. Pro. 4(a)(1). Pursuant to LR IB 3-2(a) of the Local

1 Rules of Practice, any party wishing to object to a magistrate judge's findings and
2 recommendations of shall file and serve *specific written objections*, together with points and
3 authorities in support of those objections, within 14 days of the date of service. *See also* 28 U.S.C.
4 § 636(b)(1); Fed. R. Civ. Pro. 6, 72. The document should be captioned "Objections to Magistrate
5 Judge's Report of Findings and Recommendation," and it is subject to the page limitations found
6 in LR 7-3(b). The parties are advised that failure to file objections within the specified time may
7 result in the district court's acceptance of this Report of Findings and Recommendation without
8 further review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). In addition,
9 failure to file timely objections to any factual determinations by a magistrate judge may be
10 considered a waiver of a party's right to appellate review of the findings of fact in an order or
11 judgment entered pursuant to the recommendation. *See Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th
12 Cir. 1991); Fed. R. Civ. Pro. 72.